

Background Checks & Subsequent Arrest Notification

- Where can contractors find HHSA's requirements related to background checks and subsequent arrest notification (SAN)?

Background check and SAN requirements are typically included in the contract template, section 16.21.

- What does a 'criminal background check' entail?

A criminal background check searches for previous criminal activity of an individual. Since criminal records are jurisdictional and different agencies search different databases, contractors should be mindful of the agency they select to run the check. Criminal background checks are a key component in determining an applicant's suitability for employment. Criminal background checks facilitate timely identification of any criminal history that is incompatible with the activities and interactions required by the job, especially those that involve children or vulnerable adults.

- What does 'subsequent arrest notification' entail?

Subsequent arrest notification (SAN) means that the responsive agency will proactively reach out to the employer if an individual is ever arrested. SAN is not provided by most criminal background check agencies. SAN differs from most other criminal background checks, which only provide conviction information.

- Who provides SAN?

The California Department of Justice (DOJ) provides SAN. When an employer submits a background check request to DOJ, the employer can also request that the DOJ notify the employer if the individual is subsequently arrested within its jurisdiction. DOJ requires employers to apply for a DOJ background check and SAN account. Many people refer to the DOJ background check process as 'Livescan.'

- What if a contractor can't get a DOJ account and thus cannot obtain SAN?

Contractors which cannot get a DOJ account should reach out to their COR. Often, contractors will be asked to complete annual background checks in lieu of SAN.

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- On whom should contractors perform criminal background checks and SAN?

Criminal background checks and SAN should be performed on any and all workforce members, i.e., individuals who work on the contract in any capacity, including paid staff, unpaid workers, and/or subcontractors or consultants. Workforce members include individuals with contract-budgeted and those paid via indirect funds or overhead. Workforce members include individuals with access to identifying information on HHSA clients, even if the individual isn't paid through the contract.

- How do contractors address these requirements for subcontractors or consultants?

Criminal background check and SAN requirements must flow down to all subcontractors or consultants. Contractors should check with their counsel as to the best way to ensure subcontractors and consultants have met criminal background check and SAN requirements.

- If a workforce member has criminal activity, then what happens next?

A workforce member whose background check includes criminal activity is not automatically excluded from working on HHSA contracts, nor are they automatically excluded from working with HHSA clients. Instead, contractors should develop a consistent process for reviewing any results and determining whether the results demonstrate behavior that creates increased risk, looking at factors such as the nature and gravity of the offense or conduct; the time that has passed since the offense or conduct and/or completion of the sentence; and the nature of the job sought or held.

- Does HHSA suggest any third parties to perform the checks? Does HHSA offer any training on how to run the checks or review the results?

HHSA uses the DOJ to run the checks. The DOJ provides instruction on how to request an account and how to complete background check requests. More information about the process can be found here: <https://oag.ca.gov/fingerprints>.

The Equal Employment Opportunity Commission provides guidance on the review of criminal records, found here:

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB9>.

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- What kind of documentation will likely satisfy an HHSA audit related to background checks and SAN?

The type of documentation required by HHSA during an audit may vary. For most routine background check/SAN audits, COR teams will ask for the contractor's background check/SAN process and/or verification that checks were performed for a random sampling of individuals. Documentation would generally include a written policy of the process and verification documents detailing: the date the background check and/or SAN request was made and by whom, whether the check produced any criminal results, the date the results were reviewed and by whom, and the contractor's decision as to whether the criminal results may impact the individual's job functions. COR teams sometimes ask contractors for a formal attestation that criminal background checks were completed. Non-routine audits may require more or different documentation.

COR teams will never ask to see 'rap sheets' or any other actual criminal background check results during a background check audit. HHSA also does not require contractors to maintain 'face sheets' or other background check request forms used to request criminal background checks. However, if the face sheet or request form is the document that a contractor uses to document their background check, then that is the document a COR will likely need to see.

Don't see your question answered above? Have additional questions? Your COR team is your primary resource for any and all questions related to your HHSA contract. The Agency Compliance Office is also a resource for questions related to background checks and subsequent arrest notification.

Christy Carlson, Agency Compliance Group Program Manager
Christy.Carlson@sdcounty.ca.gov or 619-338-2807

Frank Larios, Privacy Officer
Frank.Larios@sdcounty.ca.gov or 619-338-2231

Angie DeVoss, Privacy and Deputy Compliance Officer
Angie.DeVoss@sdcounty.ca.gov or 619-338-2808

Pilar Miranda, Information Security Manager
Pilar.Miranda@sdcounty.ca.gov or 619-338-2634